SUPREME COURT, U.S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 103

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

TRUCK DRIVERS LOCAL UNION No. 449, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFERS, WAREHOUSEMEN AND HELPERS OF AMERICA, A. F. L.,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR LINEN AND CREDIT EXCHANGE, OMAHA-COUNCIL BLUFFS BAKERY EMPLOYERS LABOR COUNCIL, BAY AREA COUNCIL OF BAKERY OPERATORS, BOSTON BAKERY EMPLOYERS LABOR COUNCIL, CHICAGO BAKERY EMPLOYERS LABOR COUNCIL, SEATTLE BAKERS' BUREAU, BAKERS OF WASHINGTON, INC., NEW YORK CITY BAKERY EMPLOYERS LABOR COUNCIL, FEDERATED EMPLOYERS OF NEVADA, INC., GREATER NEW YORK AND NORTHERN NEW JERSEY MILK DEALERS' LABOR COMMITTEE, AS *AMICI CURIAE*

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In the

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National Labor Relations Board, *Petitioner*, v. Truck Drivers Local Union No. 449, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. L., *Respondent*.	No. 103

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF FOR LINEN AND CREDIT EXCHANGE, OMAHA-COUNCIL BLUFFS BAKERY EMPLOYERS LABOR COUNCIL, BAY AREA COUNCIL OF BAKERY OPERATORS, BOSTON BAKERY EMPLOYERS LABOR COUNCIL, CHICAGO BAKERY EMPLOYERS LABOR COUNCIL, SEATTLE BAKERS' BUREAU, BAKERS OF WASHINGTON, INC., NEW YORK CITY BAKERY EMPLOYERS LABOR COUNCIL, FEDERATED EMPLOYERS OF NEVADA, INC., GREATER NEW YORK AND NORTHERN NEW JERSEY MILK DEALERS' LABOR COMMITTEE, AS *AMICI CURIAE*.

This case is before the Court on a writ of certiorari to the Court of Appeals for the Second Circuit which in setting aside the order and decision of the National Labor Relations Board (the Board) held that it was an unfair labor practice for members of the Linen and Credit Exchange (the Exchange), a local multi-employer association, to lay off employees in response to a strike against one employer.

The above-named multi-employer associations, as *amici curiae,* respectfully submit this brief pursuant to written consents of the parties, in accordance with Rule 42(2) of the Rules of this Court.

Interest of *Amici Curiae*

The Exchange, with eight employer members in Buffalo, Niagara Falls and Dunkirk, New York, is directly involved in this case.

The other *amici curiae* are also local multi-employer associations which, like the Exchange, have for many years negotiated contracts on behalf of their respective members in various cities and metropolitan areas throughout the United States. These *amici,* as well as the Exchange, fear that the decision below is contrary to the National Labor Relations Act, as amended (the Act), and the concept of labor relations therein provided. They further feel that the decision below will establish a precedent which will threaten the destruction of multi-employer bargaining, to the disadvantage of the employee, union, employer and the public.

Statement of the Case

Truck Drivers Local Union No. 449 (the Union) had negotiated labor contracts with the Exchange for thirteen years. In May 1953, while the Union and the Exchange continued to bargain collectively, the Union called a strike by the employees of one member of the Exchange in support of its demands against all eight members of the Exchange. The seven non-struck members of the Exchange thereupon closed their doors, but bargaining between the Union and the Exchange continued, and in a few days as a result of such bargaining a new collective bargaining agreement was reached between the Union and the Exchange on behalf of all its members (R. 17-20, 35-6, 44, 55).

Summary of Argument

Amici contend that a strike against one member of a multi-employer association constitutes a threat of strike against the other members which causes them operative problems justifying the layoff. *Amici* also contend that the Exchange is not only an entity in itself, but also is an "employer" under the Act. A strike at one member's plant is also in reality a strike against the entire association and against the bargaining procedure to which the Union and the Exchange agreed. Cessation of operations at the plants of other members is the obvious, necessary and the only practical recourse against such strike. Unless so viewed, multi-employer bargaining will be threatened with destruction.

Argument

Multi-employer bargaining, since the 1880's and particularly under the Wagner Act, has expanded concurrently with the growth of union strength. Today, multi-employer bargaining has become well established by voluntary agreement among unions and employers in metropolitan areas throughout the United States. There are now as many as 5,000,000 employees involved in multi-employer bargaining, over one-half of whom bargain at the local level with some 5,000 local employer associations.*

**Collective Bargaining with Associations and Groups of Employers*, 1947, *B. L. S. Bulletin No. 897*, pp. 1, 13; *Collective Bargaining Structures: The Employer Bargaining Unit*, 1953, *B. L. S. Report No. 1*, pp. 2, 8-11; Backman, *Multi-Employer Bargaining* (N. Y. U. Inst. of Labor Relations and Social Security, 1951), p. 10; Carpenter, *Employers' Associations and Collective Bargaining in New York City* (1950), pp. 28-9; Freidin, *The Taft-Hartley Act and Multi-Employer Bargaining* (U. of Pa. Press, 1948), pp. 4-5; Pierson, *Multi-Employer Bargaining: Nature and Scope* (U. of Pa. Press, 1948), pp. 17, 36; *Characteristics of Major Union Contracts*, Monthly Labor Review, July 1956 (pp. 805-11).

The Act recognizes that an employer includes "any person acting as an agent of an employer, directly or indirectly * * *" (Section 2(2)). "Person" is defined to include "associations" (Section 2(1)). The Board has previously held that a multi-employer unit may be considered an "employer" under the Act* and, acting pursuant to Section 9(b) of the Act, has recognized, both before and after the Taft-Hartley amendments, that local multi-employer groups are appropriate employer units for collective bargaining purposes. *Admiar Rubber Company*, 9 NLRB 407 (1938); *Waterfront Employers Association of the Pacific Coast*, 71 NLRB 80 (1946); *Ward Baking Company*, 78 NLRB 781 (1948); *Continental Baking Company*, 99 NLRB 777 (1952); *McAnary & Welter, Inc.*, 115 NLRB No. 165 (1956). Since the association is an employer it has the same right as an individual employer to lay off in the event of a strike. *Lengel-Fencil Company*, 8 NLRB 988 (1938). Furthermore, where such a multi-employer unit exists, it is the obligation and the duty of both the employers and the union to bargain in that group concerning terms of employment. (Section 8 (a)(5) and (b)(3) of the Act).

Unions and employers obtain important, practical benefits from multi-employer bargaining. In the absence of local multi-employer bargaining, when one union representing employees of several employers bargains with each employer separately the general result is the unfair system

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**Shipowners' Association of the Pacific Coast*, 7 NLRB 1002 (1938); *Mobile Steamship Association*, 8 NLRB 1297 (1938); *Alston Coal Company*, 13 NLRB 683 (1939); *Federated Fishing Boats of New England and New York, Inc.*, 15 NLRB 1080 (1939); *Associated Banning Company*, 19 NLRB 140 (1940); *John Kausel*, 28 NLRB 906 (1941); *Standard Slag Company*, 63 NLRB 313 (1945); *Waterfront Employers Association of the Pacific Coast*, 71 NLRB 80 (1946); *Association of Motion Picture Producers, Inc.*, 79 NLRB 466 (1948), 85 NLRB 902 (1949); *The Everett Automotive Jobbers Association*, 81 NLRB 304 (1949); *Bunker Hill and Sullivan Mining and Concentrating Co.*, 89 NLRB 243 (1950).

of "pattern bargaining" or "whipsawing". Extra expense of negotiation of separate contracts with each employer is incurred and inequitable contract provisions are likely—and are in fact, frequent. Without multi-employer bargaining, the small employer, acting alone, has little voice in determining his contract provisions.*

Multi-employer bargaining eliminates these disadvantages and brings about a system of collective bargaining which is fair and equitable to both sides. Small and moderately-sized employers, as in this case, are thereby enabled to bargain on more nearly equal terms. The association cannot single out the employees of one plant for treatment contrary to that accorded to others. Nor can the union single out a particular employer for discriminatory treatment. Negotiations are carried out on a unitary basis to yield a uniform contract standardizing wages, hours, vacations, seniority, grievance machinery and other conditions of employment for all workers similarly engaged in association-organized industries located in a prescribed geographical area. Better trained labor relations personnel are utilized and the master contract is a product of informed application of bargaining power equally apportioned between the association and the union. Local multi-employer bargaining in practice has promoted industrial peace.*

For these reasons, employers and unions have found multi-employer bargaining mutually acceptable after practical tests, as a major improvement in collective bargaining

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*Carpenter, *op. cit. supra*, pp. 10-14, 48-52, 61, 243-4, 368-9; Backman, *op. cit. supra*, pp. 9, 13-14; Freidin, *op. cit. supra*, p. 5, fn. 5, 13-14; Kaplan, *Negotiating Problems of the Trucking Industry*, Burke, *Negotiating Problems of the Building Industry*, Witte, *An Institutional Approach*, Proceedings of the Conference on Industry-Wide Collective Bargaining (U. of Pa. Press, 1949) pp. 21, 28, 33, 74-6, 81, 87; Jones, *The NLRB and the Multiemployer Unit*, 5 Labor Law Journal 34, 45, fn. 90 (Jan. 1954).

met. ods over earlier less satisfactory results. As David Kaplan, former chief economist for the Teamsters, has stated:*

> "* * * if the employers really want any representation in collective bargaining, they have to get that participation through some group. Otherwise, we would have to make the contract with those employers who could get together as a group and then we would have no other alternative but to impose that same contract on everyone else.
>
> "So I think that in the type of industries that I am discussing now [*e.g.*, local trucking industry]—it isn't a question of this or that type of bargaining—but it is merely a question of multi-employer bargaining, or no bargaining at all."

The demonstrated advantages of multi-employer bargaining amply justify the decision of the Board in the instant case, and similar decisions of the Seventh, Eighth and Ninth Circuits,** that members of an association have the right to invoke a temporary cessation of operations when a strike against one member occurs in the midst of contract negotiations with the association.

The Board's ruling must be upheld if the multi-employer bargaining arrangement is to continue, for employer unity is essential to the multi-employer conception. Otherwise, if at the bargaining table the union should find it may not realize any of its contract demands, whether reasonable or trivial, it could thereupon strike one or more individual employers at will and thus seek to obtain such demands by individual capitulations without any possibility of effective

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*Kaplan, *op. cit. supra*, p. 87.

**_Morand Bros. Beverage Co._ v. *National Labor Rel. Bd.*, 7 Cir., 190 F. 2d 576 (1951), 204 F. 2d 529 (1953), *cert. den.* 346 U. S. 909 (1953); *Leonard* v. *National Labor Relations Board*, 9 Cir., 197 F. 2d 435 (1952), 205 F. 2d 355 (1953); *National Labor Rel. Bd.* v. *Spalding Avery Lumber Co.*, 8 Cir., 220 F. 2d 673 (1955); *National Labor Relations Bd.* v. *Continental Baking Co.*, 8 Cir., 221 F. 2d 427 (1955).

resistance by the association with which it agreed to bargain. In fairness, the union should not be permitted thus to obtain all the advantages of multi-employer bargaining without assuming any of its obligations.

The Board, in rendering its decision, reasoned "that a strike by employees against one employer-member of a multi-employer bargaining unit constitutes a threat of strike action against the other employers, which threat, *per se*, constitutes the type of economic or operative problem at the plants of the nonstruck employers which legally justifies their resort to a temporary lockout of employees." *Buffalo Linen Supply Company*, 109 NLRB 447, 448-9 (1954), [R. 34, 37].

Amici, while agreeing with the rationale of the Board, believe that stronger reasons may be invoked by this Court in sustaining the right of a multi-employer bargaining association to suspend operations during a strike at one of the plants.

In order for multi-employer collective bargaining agreements to be possible, employers and the union must abide by certain obligations to the group bargaining unit. Each party must bargain on a group basis. Indeed, the association and the union are bound by the collective bargaining agreement negotiated between them for the length of the contract. Furthermore, contrary to the assertion of the Court of Appeals below,* the Board has refused to allow employer members as well as union members to withdraw from the group while a contract is being negotiated. *Purity Stores, Ltd.*, 93 NLRB 199 (1951); *Engineering Metal Products Corporation*, 92 NLRB 823 (1950); *McAnary & Welter, Inc.*, 115 NLRB No. 165 (1956); *Atlas Storage Division, P & V Atlas Industrial Center*, 100 NLRB 1443 (1952); *Washington Hardware Company*, 95

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